

CHAPTER 300
ADMINISTRATIVE HEARINGS

[Prior to 11/29/89, see 347—Chapter 200]

347—300.1(17A) Definitions. The definitions of terms in Iowa Code section 17A.2 shall apply to these terms as they are used throughout this chapter. In addition, as used in this chapter:

“Administrative law judge” means the person assigned to hear and decide the contested case. The person may be either the commissioner or designee.

No person may serve as administrative law judge or decide an intra-agency appeal who is biased against any party to the contested case, has a personal interest in the outcome of the contested case, or has prosecuted or advocated concerning that case or a similar case involving the same parties. For additional provisions relating to bias, refer to Iowa Code chapter 17A.17.

“Commissioner” means the labor commissioner of the division of labor services.

“Division” means the division of labor services of the department of employment services.

347—300.2(17A) Scope and application of the contested case hearing rules.

300.2(1) The rules contained in this chapter only apply to hearing before the commissioner, an administrative law judge designated by the commissioner, or the division and shall not apply to any hearing conducted by the employment appeal board pursuant to Iowa Code sections 88.8, 89A.10(2), and 549.8, or the department of inspections and appeals pursuant to Iowa Code section 89A.10(2).

300.2(2) These rules provide due process, through an administrative hearing, for any person when the division instigates action to suspend or revoke a license, variance, certificate, permit, certification, commission or similar right, or when the division wants to assess civil penalties or sanctions against a person. Specifically, these rules will apply to action taken by the division in administration and enforcement of Iowa Code chapters 88, 88A, 88B, 89, 89A, 89B, 90A, 91A, 95, and 1988 Iowa Acts, chapter 1162. These rules do not apply to hearings before the employment appeal board (see Iowa Code section 10A.601) or the department of inspections and appeals (see Iowa Code section 10A.202(1) “b”).

347—300.3(17A) Informal settlement. Persons are encouraged to meet informally with division representatives to resolve issues that might culminate in a contested case. If a negotiated settlement is reached, it shall be set out in writing and shall contain the various points of settlement and a stipulated statement of facts. The agreement, when signed by both the person and the commissioner, is binding on both.

347—300.4(17A) Representation. Persons, at their own expense, may be represented by counsel at a contested case hearing.

347—300.5(17A) Place and manner of filing. All requests of filing related to a contested case must be delivered to the Division of Labor, 1000 East Grand Avenue, Des Moines, Iowa 50319, either in person or by certified mail, return receipt requested. All requests or filings are deemed received only when delivered to the division at the above address.

347—300.6(17A) Form and caption. All pleadings, motions, or other requests filed with the division as part of the contested case must be legibly printed or typed on standard, letter-size paper; only one side of the sheet may be used. All pleadings, motions or other requests shall be signed by the party and contain the following caption:

DIVISION OF LABOR SERVICES
Des Moines, Iowa

IN THE MATTER OF:

[State the name and
address of Party]

) [State type of Pleading
) or Motion e.g.,
) Answer, Request for
) Subpoena]
) Docket No. _____
) Subject: Iowa Code
) chapter _____

347—300.7(17A) Commencing the contested case.

300.7(1) Introduction. The commencement of a contested case is regulated by the provisions of Iowa Code section 17A.12.

The division is responsible for the commencement of the contested case process, but a person aggrieved or adversely affected by any division action may request a contested case in writing delivered to the division at the address provided in rule 300.5(17A). A request must include the identity of the requesting person, the person's address, and a clear identification of the division's action that aggrieved or adversely affected that person.

The division may dismiss a request for a hearing either entirely or on any particular issue under any of the following circumstances:

- a. Where there has been a previous and final determination or decision by the division concerning the same party on the same facts pertinent to the same issue.
- b. Where the requesting person is not a proper party or does not otherwise have a right to a hearing.
- c. Where the person has failed to request a hearing within the time period specified by statute, rule, or notice.

300.7(2) Notice. The contested case is commenced when the division delivers to the parties to the action a notice which contains:

- a. The date, time and place of the hearing.
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held.
- c. A reference to the statutes and rules involved.
- d. A short and plain statement of the matter asserted.
- e. A statement requiring the named party to submit an answer of the type specified in rule 300.6(17A) within 20 days after the receipt of the notice of hearing.

300.7(3) Imperative public health, safety or welfare contested case. When the division finds that public health, safety or welfare imperatively requires emergency action, and makes a finding to that effect, summary suspension of a license will be ordered pending proceedings for revocations or other action.

300.7(4) Appearance or answer. Within 20 days of receipt of the notice the parties shall file with the division an appearance or answer in writing which shall contain:

- a. The name, address and telephone number of the party.
- b. Clear and concise statements regarding any and all allegations in the notice. These statements shall be either appearance, admissions, denials, explanations, remarks or statements of mitigating circumstances.
- c. Any additional facts or information the party deems relevant to the contested case.
- d. A statement indicating whether the party will be present at the hearing and whether the scheduled date and time is acceptable.

347—300.8(17A) Subpoenas and discovery.

300.8(1) Subpoenas. Subpoena power is generally established in Iowa Code section 17A.13. When necessary for the full presentation of a case the administrative law judge shall issue subpoenas

for the attendance and testimony of witnesses and for the production of written or recorded materials of any kind which are relevant and material to any matter at issue in the hearing. Any party who desires the issuance of a subpoena shall file a request with the administrative law judge, designating the witnesses or materials to be produced, and describing their address or location. When prepared by the administrative law judge, a subpoena shall be returned to the requesting party for service. Service may be made in any manner allowed by law, but must be performed prior to the hearing date.

300.8(2) *Discovery.* The Iowa rules of civil procedure shall be the discovery procedures for the contested case. Discovery includes depositions upon oral examination or written questions, written interrogatories, et cetera.

347—300.9(17A) Evidence.

300.9(1) *Introduction.* The technical rules of evidence do not apply in a contested case. Iowa Code section 17A.14 provides in part: “Irrelevant, immaterial, or unduly repetitious evidence should be excluded. A finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon the evidence even if it would be inadmissible in a jury trial. Agencies shall give effect to the rules of privilege recognized by law.”

300.9(2) *Copies of evidence.* A copy of a book, record, paper or document may be offered directly in evidence in lieu of the original, if the original is not available or no objection is made. Upon request, a party shall be given an opportunity to compare the original with the copy, when available. When an original is admitted in evidence, a copy may be substituted later for the original at the discretion of the administrative law judge.

300.9(3) *Official notice.* Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the division. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data, and the parties shall be afforded an opportunity to contest those facts before the decision is announced unless the administrative law judge determines as part of the record or decision that fairness to the parties does not require an opportunity to contest those facts.

347—300.10(17A) Hearing procedures. The hearing is regulated generally by Iowa Code subsections 17A.12(3) to 17A.12(8).

300.10(1) *Role of the administrative law judge.* The administrative law judge shall:

- a. Open the record and receive appearances.
- b. Administer oaths and issue subpoenas.
- c. Enter the notice of hearing into the record.
- d. Receive testimony and exhibits presented by the parties.
- e. Interrogate witnesses.
- f. Rule on objections and motions.
- g. Close the hearing to the public.
- h. Issue a decision containing findings of facts and conclusions of law.

300.10(2) *Failure to appear.* If a party fails to appear at the hearing the administrative law judge shall recess the hearing for 30 minutes. If the missing party has not appeared during that time or otherwise contacted the administrative law judge, the judge may proceed with the hearing and render a decision in the absence of the party.

300.10(3) *Decorum.* Any person or party who displays unruly or contemptuous behavior may be expelled from the hearing.

300.10(4) *Proceedings recorded and open to the public.* The hearing shall be recorded by machine. A party may demand, by giving notice ten days prior to the hearing, that the hearing be recorded by a certified shorthand reporter, but that party must bear all costs associated with the shorthand reporter. The record of the hearing or a transcript shall be filed with the division and maintained for a period of five years.

The hearing shall be open to the public unless that right is waived pursuant to Iowa Code section 17A.10(2).

300.10(5) *Presentation of testimony and evidence.* In the hearing each party shall have the right to present evidence and the testimony of witnesses, and to cross-examine the witnesses of another party. A person who has submitted testimony in written form is subject to cross-examination if that person is available. Opportunity shall be afforded to each party for redirect and recross-examination, and to present evidence and testimony as rebuttal to evidence presented by another party.

300.10(6) *Briefs.* At any time during the contested case proceeding the administrative law judge may order the filing of briefs on any of the issues.

300.10(7) *Ex parte communications.* Unless required for the disposition of ex parte matters specifically authorized by statute, there shall be no communication between the administrative law judge and any of the parties concerning any issue of fact or law unless all parties are given advance notification of the communication and its content, and are provided an opportunity to respond to the communication.

Any other method of ex parte communication is unlawful under the provisions of Iowa Code section 17A.17(2). If the administrative law judge receives an unlawful communication it shall be included in the case record, if written, or summarized and included in the record if oral. The administrative law judge may immediately decide the contested case against the party making the unlawful communication if the surrounding circumstances indicated a willful violation of this subrule. In the case of an unintentional violation the administrative law judge shall warn the party and accord all the other parties to the case an opportunity to respond to the communication.

300.10(8) *Record.* The record in a contested case shall include:

- a. All pleadings, motions and intermediate rulings.
- b. All evidence received or considered and all other submissions.
- c. A statement of all matters officially noticed.
- d. All questions and offers of proof, objections and rulings.
- e. All proposed findings and exceptions.
- f. Any decision, opinion or report by the judge presiding at the hearing.

347—300.11(17A) *Decision.* Contested case decisions are regulated generally by Iowa Code section 17A.15.

300.11(1) *A decision shall be in writing and consist of the following parts:*

- a. A concise statement of facts which support the findings of fact.
- b. Findings of facts which must be solely based on evidence in the record.
- c. Conclusions of law which must be supported either by cited authority or reasoned opinion.
- d. A decision or order which must set forth the action to be taken or the disposition of the case.

300.11(2) At the discretion of the administrative law judge the parties may be requested or allowed to submit proposed findings of fact and conclusions of law. The administrative law judge shall render a decision within 30 days of the termination of proceedings, or notify the parties of the reason for any delay.

347—300.12(17A) *Final decision, rehearing, administrative appeal, and judicial review.*

300.12(1) *Proposed and final decision—*intra-agency appeals.** When the administrative law judge is the commissioner, the decision is the final decision of the division. When the administrative law judge conducts the hearing, the judge issues a proposed decision.

A proposed decision of an administrative law judge automatically becomes the final decision of the division unless a party appeals to the commissioner to review the proposed decision within 20 days of the issuance of the proposed decision.

On appeal the commissioner has all the authority of the administrative law judge and may uphold the proposed decision or reverse it in whole or in part or remand the case to the administrative law judge.

An intra-agency review is limited to the evidence and issues presented at the contested case hearing. The commissioner may remand the case to the administrative law judge when compelling reasons justify the taking of new evidence or the consideration of new issues.

300.12(2) *Request for rehearing.* Any party may file an application for rehearing, stating the specific grounds and the relief sought, within 20 days after the issuance of any final decision by the division in a contested case. A copy of the application shall be timely mailed by the applicant to all parties of record not joining in the application. An application for rehearing shall be deemed to have been denied unless the division grants the application within 20 days after its filing. A request for a rehearing need not be made as a prerequisite for seeking judicial review of a final decision.

300.12(3) *Employment appeal board review.* Where specified in Iowa Code section 88.8, a party who is aggrieved or adversely affected by the final decision of the division may seek administrative review of that decision by the employment appeal board as provided in Iowa Code section 88.8.

300.12(4) *Department of inspections and appeals review.* Where specified in Iowa Code section 89A.10(2), a party who is aggrieved or adversely affected by the final decision of the division may seek administrative review of that decision by the department of inspections and appeals as provided in Iowa Code section 89A.10(2).

300.12(5) *Judicial review.* A party who is aggrieved or adversely affected by the final decision of the division may seek judicial review of that decision as provided in Iowa Code section 17A.19.

These rules are intended to implement Iowa Code chapters 17A, 88, 88A, 88B, 89, 89A, 89B, 90A, 91A, 91C and 95.

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